

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

September 2010

# **Educated Immigrants**

Booming rhetoric and looming legislative battles over illegal immigration have left some schools concerned about their role in the conflagration. Districts in some states require that students provide documentation of their immigration status; others take a completely hands off approach, leaving immigration status issues to immigration enforcement agencies. But what, if anything, are schools and school districts supposed to do about illegal immigrant students in their classrooms?

The answer is, schools are to provide services to all students who live within their boundaries or are selected in the charter school lottery, regardless of immigration status.

The U.S. Supreme Court confirmed this for schools back in 1982 in the case of Plyler v. Doe, 457 U.S. 202. In that case, the Texas legislature passed a law withholding state funds to a school district for any students who were not "legally admitted" into the United States. Multiple lawsuits were filed on behalf of school-age children from Mexico against various school districts in Texas and the state itself. The minors challenged provisions of the law and

sought a permanent injunction barring the districts and state from denying the children a free public education.

The U.S. Supreme Court held that the Texas law violated the Equal Protection Clause of the U.S. Constitution. That clause prohibits a state from denying "to any person within its jurisdiction the equal protection of the laws." Texas tried to argue that illegal immigrants were not within its jurisdiction.

The Court disagreed, noting that the illegal immigrants were clearly within the jurisdiction of the state's criminal and civil laws. Moreover, the Court was unwilling to deny public education services to the children of illegal immigrants. As it stated:

"At the least, those who elect to enter our territory by stealth and in violation of our law should be prepared to bear the consequences, including, but not limited to, deportation. But the children of those illegal entrants are not comparably situated." Their "parents have the ability to conform their conduct to societal norms," and presumably the ability to remove themselves from the State's jurisdiction; but

the children who are plaintiffs in these cases "can affect neither their parents' conduct nor their own status." Trimble v. Gordon, 430 U.S. 762, 770 (1977). "Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice." Id. at 220.

The Court went on to note the importance of education and the "significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." *Id.* at 221.

The Court clarified that schools should also avoid any practices which would have a "chilling effect" on parents seeking public education for their children. Such practices might include threatening a parent with deportation or threatening to call immigration agents if a student does not behave.

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#### **UPPAC CASES**

The Utah State Board of Education accepted a Stipulated Agreement for the suspension of Rosselis Cabanillas' educator license. The suspension results from Ms. Cabanillas slapping a student and asking a witness not to report the incident. Ms. Cabanillas entered into a 12 month plea in abeyance to third degree felony witness tampering and class A misdemeanor child abuse.

The State Board accepted Stipulated Agreement suspending Cristina Ann Houghton Lawrence's educator license. The suspension results from Ms. Lawrence's inappropriate peer-like relationship with one student and kissing a former minor student.

# Eye on School Policies—Attendance

A few school districts and charter schools, which shall remain nameless, have attendance policies which may violate student property rights.

As an example of the policies, a school registrar sees a student has a certain number of absences in a class and changes the student's **earned** academic grade to a "No Grade," (or NG), thereby depriving the student of the earned grade.

Students can re-earn their grade by doing one of several things: stay after school for a set period of time and work on missed assignments, attend a seminar on a topic unrelated to the course they missed, survive two subsequent terms without an NG, pay to attend a life skills course, or complete school or community service projects.

While the motives behind the programs may be good, the programs violate student property interests

in the grades they earned.

Per a 1983 Utah Attorney General's opinion and case law, depriving students of those interests requires a level of substantive due process—the determination to take the grade must be fair and reasonable.

The AG's opinion states that a student's grade not be altered because of attendance unless "the TEACHER is able to demonstrate a reasonable relationship between attendance or classroom participation and the grade which the student is given in that course." [Emphasis added].

In other words, the teacher should be able to show that the curriculum requires that the student be in class in order to accomplish the objectives. For example, a math teacher conducts math labs during class or an English teacher uses graded writing prompts to start class.

The AG also stated that "once a grade has been established by a teacher . . . A school or district policy which allows or requires that grade

to be reduced, or credit or a diploma to be withheld on the basis of lack of attendance alone is arbitrary and unreasonable...."

Although not binding on courts, AG opinions are deemed to state the law correctly, unless or until the opinion is modified or overruled by statute, judicial decision, or subsequent attorney general opinion. As of this newsletter, the 1983 opinion has not been modified. Per that opinion, a policy that withholds a student grade based solely on absences is unreasonable.

Further, a policy that allows a student to re-earn the grade by attending a class or seminar completely unrelated to the academic class could be viewed as arbitrary and held to further violate a student's substantive due process rights.

In short, teachers should base student grades on academic performance and no other school official should alter those grades.

### **UPPAC** Case of the Month

There are multiple opportunities for educators to find themselves in trouble while using modern technology. While most UPPAC cases involve educator misuse of school computers or Internet to access pornography, new technology related issues and concerns continue to arise.

For example, UPPAC has reviewed several cases involving educators becoming overly familiar with students via text messaging or social networking sites. While texting students about school assignments may be acceptable (depending on district or school policy), educators who send hundreds of texts to a student or who discuss personal issues with students via text may find themselves facing licensing sanctions.

One recent UPPAC case involved an educator who expressed a desire to hug and hold hands with a student. Another encouraged a student's rebellion against his parents via a series of text messages.

Using text messages as a means to pursue either a dating or social relationship with a student or to assume a parenting role is unprofessional conduct subject to licensing action.

Similarly, educators who talk to their students as peers using social networking sites or text messages have also crossed professional boundaries. An educator who discusses cute boys with students or the latest fashions in teen magazines may have already lost sight of her role as the student's teacher, which does not encompass being a student's BFF (best friend forever for the adults out there) on Facebook or elsewhere.

The State Board has taken action against educators for other acts of inappropriate technology use, such as an educator who wrote about her students by name and posted their photos on a personal blog site. The Board has also suspended a counselor's license for providing a cell phone to a student which the student then used to text the counselor for fast food, cash, and other non-essential items the boy's parents did not want him to have.

Educators using cell phones to contact students should keep all communications professional. Educators can be friendly without acting as a peer to students and should not be counseling students via cell phone, or any other medium, without prior written parental consent. Educators with personal social networking sites should avoid "friending" students or otherwise allowing students to access their personal sites. Besides, do you really want students to know how you spend your weekends?

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#### **Recent Education Cases**

Angstadt v. Red Clay Consol. Sch. Dist. (Del. 2010). The court found that the school district could not use letters sent to the teacher but not retained in her personnel file in its decision to terminate the teacher. However, the school district could use an analysis of her lesson plans that

was contained in the file and provided ample grounds for termination.

Angstadt was non-

renewed. She filed a wrongful termination suit against the district claiming the decision to nonrenew was based on four emails and letters sent to her during the school year regarding her interactions with students. None of the correspondences was placed in Angstadt's personnel file, as required by state law. Angstadt also complained that the district wrongfully used an unannounced lesson plan analysis that was placed in her file but which contained items she was not permitted to remedy.

The court agreed with Angstadt that the school district could not terminate an employee by relying on written documents not in her personnel file. However, the court also found that the lesson plan analysis was adequate documentation and the lack of time to remedy the problems did not deprive the teacher of her right to notice of the reasons for termination and a chance to dispute the reasons.

Thus, while the district's process was not perfect, the district did substantially comply with the policies at issue and provided all due process to Angstadt.

Knudsen v. Washington State Executive Ethics Board (Wash. App. Div. 2010). The court upheld a community college board's decision that a teacher violated state law by using school email to send a message encouraging other teachers to lobby their state representatives.

The teacher used the college email to send a message to all teachers at state community colleges in Spokane encouraging them to urge state legislators to approve two bills that would provide tenure—like protections to part-time college teachers. Ironically, the teacher reminded recipients to use their home email to contact their legislators while urging them to

"tell any of your personal problems with lack of job security."

School policy allowed limited use of school email for personal business, but did not trump state law which prohibits the use of state resources for lobbying (as does Utah law).

The teacher admitted sending the email and that the purpose was to aid in passage of the bills which, she stated, would improve her position and the positions of all part-time faculty. She argued, however, that her use did not result in any benefit or gain to her and was protected political speech.

The court noted that state law did not require that she actually benefit from her personal use of state email, but only that the purpose for the email was personal gain. The teacher also claimed that the board violated her free speech rights. The court determined that the board can restrict speech in a non-public forum, which would include school email.

# **Your Questions**

**Q:** I opened up a kindergarten singing period to the students' choice. One of the students asked to sing a religious song. What is the appropriate response?

**A:** While religious music is permitted where it relates to a music curriculum, chances are the song chosen in a kindergarten class was not based on the student's view that the song is musically challenging and, thus, a valid learning experience. In that case, the best response may be to allow the student to sing the song, but not belabor

What do you do when...?

the meaning. The teacher may also refocus the student back onto a more appropriate kindergarten song by saying something like, "I'm not sure everyone knows that song, how about one we learned in class, such as \_\_\_\_\_." To avoid the situation altogether, the educator may want to ask students to "choose a song about animals" or

"a song about winter" and not leave the choice too open ended.

**Q:** As a school counselor, a parent confided in me that her daughter suffers from anorexia and depression. The parent asked that I not share the information with anyone else at the school. Should I honor the parent's request?

**A:** Yes and no. The school has a legitimate interest in knowing this information so it can ensure the student is not unwittingly placed

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

# Your Questions Cont.

(Continued from page 3)

in any danger by its faculty or staff. Explain this to the parent. Let the parent know you will respect the student's privacy, but it may be in the student's best interests for other administrators or educators to know also if those individuals need to be aware of the student's health issues in order to keep the student safe.

For example, a physical education teacher may need to know about the student's health concerns to prevent the teacher from forcing a student to perform a physical activity that her body is not in a condition to complete without severe health risks.

**Q:** I am a high school counselor. A student told me he thinks he might be gay. Am I required to tell the parents?

**A:** It depends, (again!). If the student is seeking to discuss his concerns about personal sexual issues with you, you need to have the parent's written consent. Regardless of orientation, written parental consent is required to discuss personal sexual orientation, behaviors or opinions with students.

If the student isn't sure what he wants from you, you can explain any general resources that might be available regarding sexual orientation, such as anti-harassment policies the school may have, or the school Gay-Straight Alliance, if one exists.

The educator must use her best professional judgment to determine if the student presents a serious risk to himself or others, requiring the educator to contact the parents.

**Q:** The parents of a few students in my biology class are opposed to

their children learning about evolution. The parents want their children excused from lessons on evolution or, in the alternative, for a portion of my class to present creationism. What am I legally required to do?

**A:** Public school educators do not have the academic freedom to revamp the state core curriculum. Thus, focusing significant class time on creationism would be outside of the core curriculum and the educator's scope of employment.

On the other hand, parents may opt their children out of lessons parents find to be contradictory to their religious beliefs. However, the parents need to understand that they are responsible for providing the information, using their own teaching style, to their children so that the students can satisfy any core curriculum requirements related to evolution.